

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT LUGBE – ABUJA
ON, 6TH MARCH, 2017.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

SUIT NO.: -FCT/HC/CV/648/17

BETWEEN:

**SYSTEM & PERFORMANCE MANAGEMENT
CONSULTING LIMITED:.....PLAINTIFF**

AND

**1) FEMAZ MICROFINANCE BANK LTD
2) MRS SANDRA CHIDIMMA IKOKU-NWUGO
3) EMEKA NWUGO** }
:.....DEFENDANTS

Ifeanyi Chukwu Nwaeze with Chijioke Anieto and Ifeanyi V. Agwu for the Plaintiff.
Kingsley A. Ajunwa for the Defendants.

PROCEEDING/JUDGMENT.

Ajunwa Esq.:

We have a notice of intention to defend dated 20th February, 2017. In support of the notice is a 29 paragraph affidavit deposed to by one Bilkisu Ibrahim Ayma and we intend to rely on all paragraphs of the affidavit. Annexed to the affidavit is Exh 'A' 'Termination of Investment'. We urge the Court to transfer the matter to the general cause list.

Nwaeze Esq.:

We are not objecting to the matter being transferred to the general cause list but on the condition that the admitted debt be paid to the Plaintiff.

Pursuant to Order 20 Rule 3(1) of the High Court of Federal Capital Territory, (Civil Procedure) Rules 2004, Rules of this Court and Order 13 Rule (2) and Section 123 Evidence Act. Based on these, I submit and urge the Court to enter judgment in the sum of 34.7m in favour of the Plaintiff and transfer the remainder to the general cause list.

I also apply to withdraw the 2nd relief in the statement of claim dealing with interest.

Application is granted, 2nd relief of the statement of claim is withdrawn and struck out.

Ruling on Notice of Intention to Defend.

By paragraph 20 of the Notice of Intention to defend this suit, the Defendants have made admission in paragraphs (7) and (20) of their affidavit which reads,

Paragraph 7;

“That the depositions on paragraph 1, 2, 3 and 4 of the Plaintiff’s supporting affidavit are true. The summary of the Plaintiff’s pleadings in paragraphs 3 and 4 is that the Plaintiff deposited N75m with the 1st Defendant superintended by 2nd and 3rd Defendants, which deposit would mature for payment on the 16th and 29th November, 2016 as evidenced in the certificate of investment”.

The Defendants in their affidavit in support of the notice of intention to defend averred by this admission:

Paragraph 20;

That in total, the Plaintiff has collected N25m plus N15.3m which total N40.3m out of its N75m investment with 1st Defendant”.

Thus making an admission of N40.3m leaving a balance of N34.7m. The Evidence Act Section 123 provides that no fact need be proved in any civil proceedings, which includes matter under undefended list, where the party or any of its agents had agreed to admit in writing under their hand or any part which by any rules or pleading in force at the time they are deemed to have admitted by their pleadings.

Thus by the paragraphs 7 and 20 of the Defendants' affidavit in support of Notice of Intention to defend which is in their writing, the Defendant had admitted that the Plaintiff paid in N75m and had withdrawn N40.3m leaving a balance of N34.7m in the bank of the Defendants, what is admitted need not be proved.

The Plaintiff has admitted in paragraph 9 of the affidavit in support of receiving N25m from the Defendant and therefore, is claiming the balance of N50,000,000.00

Therefore, by Order 13 Rule 2(3) of the High Court of Federal Capital Territory, (Civil Procedure) Rules 2004, the Court is endeared to enter judgement to the extent of the undefended part of the claim while the remainder of the claim be treated in the normal way, that is to put it to proof.

Moreover, Order 21 also empowers the Court in matters under undefended list to enter judgement in favour of the admitted debt.

Therefore, in the instant case, the Defendants having admitted a part of the claim, I see no reason why this Court would not enter judgement in favour of the Plaintiff in respect of N34.7m admitted by the Defendant out of the N50m claimed by the Plaintiff in their pleadings.

Placing reliance on Section 123 Evidence Act, Order 21, and Order 13 of the High Court of Federal Capital Territory, (Civil

Procedure) Rules 2004, judgement is entered in favour of the Plaintiff to the tune of N34.7m admitted by the Defendants, out of the N50m the Plaintiff is claiming.

Plaintiff is under the duty to prove to the satisfaction of the law that Defendant is owing him N15.3m. In that respect, the suit is transferred to the general cause list and parties are ordered to file and exchange their pleadings within 14 days from date of the Ruling.

HON. JUSTICE A. O. OTALUKA
6/3/2017.